

**STATEMENT OF JIM HUGHES
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HEARING OF THE SENATE ENERGY SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

**S. 203, TO OPEN CERTAIN WITHDRAWN LANDS IN BIG HORN COUNTY, WYOMING, TO
LOCATABLE MINERAL DEVELOPMENT FOR BENTONITE MINING**

AND

**S. 246, TO PROVIDE THAT CERTAIN BUREAU OF LAND MANAGEMENT LAND BE HELD IN TRUST
FOR THE PUEBLO OF SANTA CLARA AND THE PUEBLO OF SAN ILDEFONSO IN THE STATE OF
NEW MEXICO**

FEBRUARY 27, 2003

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to appear here today to discuss S. 203, a bill to open certain withdrawn lands in Big Horn County, Wyoming, to locatable mineral development for bentonite mining, and S. 246, a bill to provide that certain Bureau of Land Management land be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico. The Department of the Interior generally supports the intent of S. 203, but has some concerns about how the bill would be implemented. The Department generally supports S. 246, but would like to work with the Subcommittee to make some modifications.

S. 203

Executive Order 7491 of November 14, 1936, withdrew over 3,500 acres of public land in Big Horn County, Wyoming, from settlement, location, sale or entry, and reserved the lands for use by the War Department as a target range. These lands remain withdrawn and reserved under the jurisdiction of the Secretary of the Army for target range purposes, and are currently used by the Wyoming Army National Guard. The most recent review and rejustification of this withdrawal occurred in May 1984 and concluded that mining operations could not be allowed in the area because of the concerns with small arms training. S. 203 would open approximately 40 acres of this withdrawn land for bentonite mining.

The BLM has no objection to the mining of bentonite on this parcel, however, the BLM is concerned about some ambiguity in S. 203, in its current form. As written, it is not clear whether the lands will be opened to bentonite location under the 1872 Mining Law, which would require BLM to record and regulate the location of the claims. Secondly, it is unclear whether the actual mining of the bentonite will be managed by the Secretary of the Army or the BLM as the bill does not appear to return the lands to the public domain by revoking the withdrawal. We would also prefer to draw a more narrow exception for this parcel than the broad sufficiency language the bill currently provides.

Bentonite may be either a "locatable mineral" under the 1872 Mining Law or valued as a "common variety mineral" and salable under the Materials Act of 1947. The Department of the Interior recommends that language in S. 203 be modified to direct the BLM to use the authority of the Materials Act of 1947 to allow for a competitive sale of the bentonite on this parcel. The BLM currently has the authority to sell common variety bentonite off the parcel with the consent of the Department of Army, and subject to its operations. It is our understanding, however, that the bentonite on this 40 acre parcel may be of a locatable nature. Location and discovery of a locatable mineral under the 1872 Mining Law allows the claimant the right to apply for patent of the lands. While there remains in force a legislative moratorium on the issuance of patents for surface lands, a locatable claim could create a future property interest in minerals that could conflict with the Department of the Army's ability to use the land. Therefore, we could not support this bill if it allows the minerals on the site to be mined in a way that would complicate any future military use of the land.

Should the withdrawal be modified or revoked, and the lands placed under BLM management by this bill, it is important that an examination of the use of the proposed withdrawn lands be completed before a

decision can be made to open them to bentonite mining. Without additional statutory direction, if the proposed use is acceptable, an amendment to the existing resource management plan would need to be completed and the 40 acres of withdrawn lands placed back into the public domain. Subject to any existing 1872 Mining Law claims, the BLM might need to complete a process of opening the land in an equitable manner to all claimants.

S. 246

The Department of the Interior generally supports S. 246, but believes the Committee should consider modifications to the bill. The BLM has identified the approximately 4,480 acres described in the legislation as available for disposal. The BLM agrees that the adjacent Pueblos of Santa Clara and San Ildefonso would be appropriate holders of the land.

The two Pueblos have a long-standing interest in acquiring this parcel. The parcel is bordered on the north by the Santa Clara Pueblo, on the south by the San Ildefonso Pueblo, and on the west by National Forest lands claimed as aboriginal holdings by the two tribes. In 1988, the BLM's Taos Resource Management Plan identified the parcel as difficult and uneconomical to manage and determined it suitable for disposal. Currently there are no known resource permits, leases, patents or claims affecting these lands.

S. 246 would divide the parcel by conveying approximately 2,480 acres of BLM land to the Pueblo of Santa Clara and about 2,000 acres to the Pueblo of San Ildefonso. Again, the BLM believes the Pueblos would be appropriate owners of the land, and would support placing them in trust to be used for traditional and customary uses, or to be used for stewardship conservation for the benefit of the Pueblos. The Department is concerned however, while this legislation would convey land that is currently or has recently been the subject of a land claim, the bill does not settle any future claims for lands managed by the BLM. The bill should be modified to include a provision for the Pueblo of San Ildefonso to relinquish any claim under Docket No. 354 in the United States Court of Federal Claims and a separate provision to waive any future claims by the Pueblo of Santa Clara with regard to these lands. This would provide finality to long standing land claims.

Mr. Chairman, the Department looks forward to working with the Committee on these bills. Thank you for the opportunity to testify before you today. I would be pleased to answer any questions that you or the other members may have.